

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-126416-02

Date:

AUGUST 09, 2002

In Re:

LEGEND:

Decedent =
Executor =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This letter is in response to your letter dated May 7, 2002, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under section 2032(a) of the Internal Revenue Code.

The facts presented and the representations made are summarized as follows. Decedent died on Date 1. On Date 2, the executor (Executor) of Decedent's estate timely filed the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706). The Executor engaged a law firm to administer Decedent's estate and prepare the federal estate tax return. The law firm was experienced in the preparation of federal estate tax returns and was familiar with the rules under section 2032(a) regarding the election to value the assets in Decedent's gross estate on an alternate date. The Executor had no reason to doubt the law firm's expertise in estate tax matters. The law firm failed to advise Executor of the availability of the election and, as a result, the Executor did not make the election on the return.

By Date 3, Executor became aware of the election under section 2032(a). On Date 4, Executor filed a supplemental estate tax return on which the executor made the election under section 2032(a). Date 4 is not more than one year after the time prescribed by law (including extensions) for filing the estate tax return. The value of the gross estate and the tax imposed by chapters 11 and 13 decreased as a result of making the election.

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LAW AND ANALYSIS:

Section 2032(a) provides that the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

- (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within six months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.
- (2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within six months after the decedent's death such property shall be valued as of the date six months after the decedent's death.
- (3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

Section 2032(c) provides that no election may be made under section 2032 with respect to an estate unless such election will decrease: (1) the value of the gross estate; and (2) the sum of the tax imposed by chapters 11 and 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

Section 2032(d)(1) provides that an election under section 2032 shall be made by the executor on the return of tax imposed by chapter 11. Such an election, once made, shall be irrevocable. Under section 2032(d)(2), no election may be made under section 2032 if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

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Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(a).

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the Commissioner will grant a reasonable extension of time to make an election only when the interests of the Government will not be prejudiced by the granting of relief.

Based on the facts submitted and the representations made, the standards of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make the election under section 2032(a) is granted until Date 4, the date on which the supplemental estate tax return was filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer

Sincerely,
William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for §6110 purposes

cc: